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DEPARTMENT OF COMMUNITY AFFAIRS

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Secretary

September 25, 2000

Richard M. Carnell, Jr.
General Counsel
Indian River Terminal Company
Post Office Box 1208
Fort Pierce, Florida 34954

Dear Mr. Carnell:

Subject: Fort Pierce Comprehensive Plan Amendment

I have been asked to reply to your July 19th letter to Roger Wilburn concerning the roles of the City of Fort Pierce and St. Lucie County with regard to the Port Master Plan and the City's Comprehensive Plan. Please accept my apology for the lateness of this reply. As you allude to in your letter, the issues regarding the Port Master Plan are not straightforward.

As you discussed in your letter, the recent history of the port includes the Legislature's enactment of Chapter 88-515, entitled the "St. Lucie Port and Airport Authority Act," which abolished the special taxing district known as the Fort Pierce Port and Airport Authority previously created under Chapter 61-2754, Laws of Florida, and created the St. Lucie County Port and Airport Authority. Chapter 88-515 was then repealed by Chapter 97-377, Laws of Florida, which provided reorganizing, updating and clarifying provisions for the authority. The next year, the Legislature enacted Chapter 98-496, Laws of Florida, which dissolved the St. Lucie County Port and Airport Authority and transferred its assets and liabilities to the Board of County Commissioners of St. Lucie County. Section 4, Chapter 98-496, Laws of Florida states:

The provisions of this act shall be liberally construed in order that St. Lucie County may effectively carry out the assumption of the authority and powers of the abolished authority and the purposes of this act.

As you are also aware, the City of Fort Pierce is subject to § 163.3178(2)(k), Fla. Stat., which provides that coastal management elements shall contain a component which includes the, comprehensive master plan prepared by each deepwater port listed in Section 311.09(1), Florida (which includes the Port of Ft. Pierce). Further, the section provides that such component shall be submitted to the appropriate local government at least 6 months prior to the due date of the local plan. Also, according to § 163.3178(2)(k), Fla. Stat.

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The 'appropriate local government' means the municipality having the responsibility for the area in which the deepwater port lies...

To add additional insight to this matter, your reference is drawn to Rule 9J-5.012(5), F.A.C. In pertinent part that rule provides as follows:

(5) ...A port master plan shall be prepared by or for each deepwater port for the purposes of coordinating the activities of the port with the plans of the appropriate local government; determination of compliance does not imply conceptual approval by the State for permitting purposes.

(a) Deepwater ports shall prepare a port master plan and submit it to the appropriate local government for incorporation as a part of the coastal management element at least six months prior to the due date of the local government's comprehensive plan established pursuant to law. This port master plan shall be incorporated as a part of the coastal management element, and be consistent with the goals, objectives, and policies of the coastal management element ...The failure of a deepwater port which is an agency of a local government to prepare a deepwater port master plan may result in the sanctions in Section 163.3184, Florida Statutes, being applied and the missing deepwater port master plan being prepared. by the regional planning council. Regardless of whether a deepwater port has prepared a port master plan, any port development shall be consistent with the goals, objectives and policies of the coastal management element of the jurisdiction in which the development occurs.

The rule continues in subsections (b) through (d) to direct the deepwater port to: prepare applicable inventories and analyses; develop goals, objectives and policies; and set forth plans for future port expansion; respectively. Subsection (e) then gives guidance on the inclusion of the port master plan into the coastal element of the comprehensive plan of the "appropriate local government."

Therefore, reading together the provisions of Section 163.3178(2)(k), Fla. Stat., and Rule 9J-5.012(3)(c)12, F.A.C., it is clear that the deepwater port shall prepare a port master plan. In this instance, according to Chapter 98-497, Laws of Florida, it is also clear that St. Lucie County has the "authority and powers" of the former St. Lucie County Port and Airport Authority regarding the Port of Fort Pierce. Therefore, it appears that St. Lucie County (as the entity with ownership of the assets of, and responsibility to act for, the former port authority) has the • primary, authority over the port and is the entity responsible for preparation of a port master plan. Once prepared, that port master plan should be submitted to the "appropriate local government" and included in its comprehensive plan. The "appropriate local government," being the one

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having the responsibility for the area in which the deepwater port lies, would appear to be the City of Fort Pierce.

Regarding your inquiry about the City's Charette Plan, the Charette Plan is a work effort of the City and is not the port master plan, until such time as the County were to adopt it as such. Thus, the Charette Plan has no legal effect at this time.

I hope that you find this information helpful to you in your understanding of this matter. Should you have additional questions, you may address them to me at the letterhead address or by telephone at (850) 488-0410.

Very truly yours,

Andrew S. Grayson
Assistant General Counsel

ASG/

cc: Roger Wilburn, Department of Community Affairs
Lloyd Bell, Destin Beach Inc.
Honorable John Bruhn, Chairman, St. Lucie County Board of County Commissioners
Julia Shewchuk, Director of Community Development, St. Lucie County
Honorable Edward G. Enns, Mayor, City of Fort Pierce
Ramon Trias, Planning Director, City of Fort Pierce